



COUNTY OF LOS ANGELES
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October 29, 2015

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TO: PATRICK OGAWA
Acting Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: JENNIFER A.D. LEHMAN JADL
Assistant County Counsel
Law Enforcement Services Division

RE: Annette Montalvo, et al. v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. TC 023708

Attached is the Agenda entry for the Los Angeles County Contract Cities Liability Trust Fund Claims Board's recommendation in the above-referenced matter. Also attached is the Case Summary and the Summary Corrective Action Plan for the case.

It is requested that this recommendation and the Case Summary be placed on the Board of Supervisors' agenda of November 10, 2015.

JADL

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Contract Cities Liability Trust Fund Claims Board's recommendation: Authorize settlement of the matter entitled Annette Montalvo, et al. v. County of Los Angeles, et al., Los Angeles Superior Court Case No. TC 023708 in the amount of \$8,850,000, and instruct the Auditor-Controller to draw a warrant in the amount of \$1,440,338.14 to implement this settlement from the Sheriff's Department Contract Cities Trust Fund's budget. The Contract Cities' excess insurance carrier will cover the remaining \$7,409,661.86 of the total \$8,850,000 settlement.

This lawsuit concerns allegations of wrongful death and excessive force by Sheriff's Deputies.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Annette Duenas Montalvo, et. al. v. County of Los Angeles, et al.
CASE NUMBER	TC023708
COURT	Los Angeles Superior Court
DATE FILED	November 6, 2009
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$ 8,850,000
ATTORNEY FOR PLAINTIFF	John C. Taylor, Esq. Taylor & Ring, LLP.
COUNTY COUNSEL ATTORNEY	Edwin Lewis Principal Deputy County Counsel
NATURE OF CASE	<p>This is a recommendation to settle for \$8,850,000, the lawsuit filed by Annette Duenas Montalvo, Kassandra Montalvo, and Maria Montalvo against the County and the Sheriff's Department, alleging civil rights violations in the shooting death of Alfredo Montalvo following a vehicle pursuit.</p> <p>Due to the risks and uncertainties of litigation, a reasonable settlement at this time will avoid further litigation costs. Therefore, a full and final settlement of the case in the amount of \$8,850,000 is recommended.</p>
PAID ATTORNEY FEES, TO DATE	\$ 445,144
PAID COSTS, TO DATE	\$ 109,990



Summary Corrective Action Plan

The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	Sunday, April 26, 2009; approximately 10:40 a.m.
Briefly provide a description of the incident/event:	<p><u>Annette Duenas Montalvo, et al. v. County of Los Angeles, et al.</u> Summary Corrective Action Plan 2015-050</p> <p>On Sunday, April 26, 2009, at approximately 10:40 p.m., two Los Angeles County deputy sheriffs (detectives), assigned to the Los Angeles County Sheriff's Department's Century Station, were patrolling the city of Lynwood in an unmarked Los Angeles County Sheriff's vehicle when they observed a car leave a convenience store and drive over a curb and across four lanes of traffic. The vehicle was being driven at a high rate of speed and without headlights. Believing the driver (decedent) was involved in criminal activity emanating from the store, the deputy sheriffs initiated a pursuit of the vehicle.</p> <p>The decedent failed to stop and instead increased his speed to 50 miles per hour, weaved carelessly through traffic, and attempted to strike an oncoming patrol vehicle. The decedent's vehicle ultimately crashed into a parked car at Santa Fe Avenue and Norton Avenue, Lynwood.</p> <p>When the vehicle came to rest, several deputy sheriffs positioned themselves to the rear of the decedent's vehicle, ordered him to surrender, and instructed him to come out of the vehicle. The decedent refused, appeared to reach under the front seat of his vehicle, and suddenly placed his vehicle in reverse and rammed the unmarked patrol vehicle parked behind it. The collision injured three Los Angeles County deputy sheriffs who were standing nearby, including one who was knocked to the ground.</p> <p>After the collision with the patrol vehicle, the decedent's vehicle lunged forward to a stop. The decedent placed his vehicle in reverse a second time and began to back into the patrol vehicle and fallen deputy sheriff. At this time, nine Los Angeles County deputy sheriffs, in fear for their lives and for the life of their colleague, deployed deadly force by discharging their weapons, striking and killing the man.</p>

1. Briefly describe the **root cause(s)** of the claim/lawsuit:

The **primary root cause** in this incident was the decedent's failure to surrender and his continued assault on deputy sheriffs by reversing his vehicle in their direction. This resulted in the deputy sheriffs to fear for their lives and their partners, at which time they deployed deadly force.

2. Briefly describe recommended corrective actions:
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

The Los Angeles County Sheriff's Department had relevant policies and procedures/protocols in effect at the time of the incident.

The Los Angeles County Sheriff's Department's training curriculum addresses the circumstances which occurred in the incident.

This incident was thoroughly investigated by representatives from the Los Angeles County Sheriff's Department's Homicide Bureau to determine the extent to which one or more members of the Los Angeles County Sheriff's Department engaged in *criminal* conduct.

The results of their investigation were presented to representatives from the Los Angeles County District Attorney's Office. On December 23, 2009, the Los Angeles County District Attorney's Office concluded that the deputy sheriffs involved in the incident acted lawfully in self-defense.

The incident was further investigated by representatives from the Los Angeles County Sheriff's Department's Internal Affairs Bureau to determine the extent to which one or more members of the Los Angeles County Sheriff's Department engaged in *administrative* misconduct before, during, and/or after the incident.

On September 23, 2010, the results of the administrative investigation were presented to the members of the Los Angeles County Sheriff's Department's Executive Force Review Committee. The members of the Committee determined the use of deadly force was reasonable and necessary and within Department policy, and the tactics employed by all personnel in this incident were within Department policy.

Although members of the Los Angeles County Sheriff's Department's Executive Force Review Committee determined the deadly force and tactics were within the Department Policy, a comprehensive debriefing by supervisors was conducted to identify officer safety and tactical issues.

On September 25, 2015, the Los Angeles County Sheriff's Department's Risk Management Bureau caused the re-publication and distribution of the following two policy sections and the following two newsletters:

- Los Angeles County Sheriff's Department's Manual of Policy and Procedures section 3-10/200.00, *Use of Firearms and Deadly Force*, to remind all members of their responsibilities when making the decision to deploy deadly force. (**Exhibit A** – Los Angeles County Sheriff's Department's Manual of Policy and Procedures section 3-10/200.00, *Use of Firearms and Deadly Force*.)
- Los Angeles County Sheriff's Department's Manual of Policy and Procedures section 3-10/220.00, *Use of Firearms Against Vehicles and/or Occupants of Vehicles*, to remind all members that (among other things) "an assaultive motor vehicle shall not presumptively justify a Department member's use of deadly force." (**Exhibit B** – Los Angeles County Sheriff's Department's Manual of Policy and Procedures section 3-10/220.00, *Use of Firearms against Vehicles and/or Occupants of Motor Vehicles*.)
- Los Angeles County Sheriff's Department's Field Operations Support Services Newsletter Volume 15, Number 25, *Using a Firearm Against a Vehicle*, designed to remind all members of the policy requirements and strategic factors involved in using a firearm against a motor vehicle. (**Exhibit C** - Los Angeles County Sheriff's Department's Field Operations Support Services Newsletter Volume 15, Number 25, *Using a Firearm Against a Vehicle*.)
- Los Angeles County Sheriff's Department's Field Operations Support Services Newsletter Volume 15, Number 14, *Shooting at Vehicle Tires*, designed to remind all members of the

County of Los Angeles
Summary Corrective Action Plan

- Los Angeles County Sheriff's Department's Field Operations Support Services Newsletter Volume 15, Number 14, *Shooting at Vehicle Tires*, designed to remind all members of the dangers associated with shooting at the tires of a moving vehicle. (**Exhibit D** - Los Angeles County Sheriff's Department's Field Operations Support Services Newsletter Volume 15, Number 14, *Shooting at Vehicle Tires*.)

3. Are the corrective actions addressing department-wide system issues?

- ☐ Yes – The corrective actions address department-wide system issues.
- ☒ No – The corrective actions are only applicable to the affected parties.

Los Angeles County Sheriff's Department

Name: (Risk Management Coordinator)

Patrick Hunter, Acting Captain
Risk Management Bureau

Signature:

Date:

9/25/15

Name: (Department Head)

Earl M. Shields, Chief
Professional Standards Division

Signature:

Earl Shields km

Date:

09-29-15

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K. MANNIS
09-29-15
NOTED

Chief Executive Office Risk Management Inspector General USE ONLY

Are the corrective actions applicable to other departments within the County?

- ☒ Yes, the corrective actions potentially have County-wide applicability.
- ☒ No, the corrective actions are applicable only to this department.

Name: (Risk Management Inspector General)

Destiny Castro

Signature:

Destiny Castro

Date:

9/30/2015

EXHIBITS

EXHIBIT A

**3-10/200.00 USE OF FIREARMS AND DEADLY FORCE**

The Department's policy on use of firearms and deadly force is:

- discharging a firearm at another human being is an application of deadly force and must, therefore, be objectively reasonable. Each Department member discharging a firearm must establish independent reasoning for using deadly force. The fact that other law enforcement personnel discharge firearms is not by itself sufficient to justify the decision by a Department member to shoot;
- Department members may use deadly force in self-defense or in the defense of others, only when they reasonably believe that death or serious physical injury is about to be inflicted upon themselves or others;
- Department members may use deadly force to effect the arrest or prevent the escape of a fleeing felon only when they have probable cause to believe that the suspect represents a significant threat of death or serious physical injury to the member or other person(s). If feasible, members shall identify themselves and state their intention to shoot before firing at a fleeing felon;
- the firing of warning shots is inherently dangerous. They should not be fired except under the most compelling circumstances. Warning shots may be fired in an effort to stop a person only when the Department member is authorized to use deadly force, and if the member reasonably believes a warning shot can be fired safely in light of all the circumstances of the encounter; and
- cover fire is defined as target specific controlled fire which is directed at an adversary who poses an immediate and on-going lethal threat. This tactic shall only be utilized when the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Department members employing cover fire must establish their reason(s) for utilizing this tactic.

Revised 07/12/13

Revised 12/19/12 (Implementation January 1, 2013)

Revised 06/13/05

Revised 05/16/05

04/01/96 MPP

EXHIBIT B



3-10/220.00 USE OF FIREARMS AGAINST VEHICLES AND/OR OCCUPANTS OF VEHICLES

This section reinforces the Department's Core Values and underscores the reverence for human life.

The use of firearms against motor vehicles is inherently dangerous and almost always ineffective.

For the purposes of this section, an assaultive motor vehicle shall not presumptively justify a Department member's use of deadly force. A Department member threatened by a motor vehicle shall move out of its path instead of discharging a firearm at it or its occupant(s), allow the vehicle to pass, and utilize other tactical or investigative means to apprehend the suspect. If Department members decide to engage the vehicle in a pursuit, that pursuit shall be governed by the Department's pursuit policy (section 5-09/210.00 et seq.).

When on foot, Department members, except as required for fixed-point traffic control, shall not position themselves or remain in the path of a motor vehicle. Additionally, they shall not stop in a position directly in front of or behind a driver-occupied, stationary motor vehicle. Such positions are inherently unsafe.

The primary tactical consideration shall be for Department personnel to move out of the path of a vehicle.

A Department member shall not discharge a firearm at a motor vehicle or its occupant(s) in response to a threat posed solely by the vehicle unless the member has an objectively reasonable belief that:

- the vehicle or suspect poses an immediate threat of death or serious physical injury to the Department member or another person; and
- the Department member has no reasonable alternative course of action to prevent death or serious physical injury.

"Immediate threat of death or serious physical injury" as stated above is to be limited to an articulable threat to Department members or identifiable persons on scene. The possibility that a vehicle may cause harm to others if it were able to leave the immediate scene does not in itself justify discharging a firearm at a vehicle or its occupant(s).

In the extraordinary instance that a Department member feels compelled to fire at a motor vehicle or its occupant(s), the conduct of the involved personnel shall be evaluated in accordance with sound tactical principles including the following:

- cover and/or tactical relocation;
- safe distance;
- incident command and tactical leadership;
- coordinated personnel placement;
- tactical approach;

- regard for viable target acquisition;
- due regard for background, including the location, other traffic, and innocent persons;
- due regard for crossfire; and
- controlled fire and management of ammunition.

Shooting at tires of a vehicle is inherently dangerous and presents additional risk to Department members and others in the immediate area. If a Department member feels compelled to stop a vehicle, first consideration should always be placed on utilization of spike strips. In the rare instance when a Department member feels compelled to fire at the tires of a vehicle, the conduct of the involved personnel shall be evaluated in accordance with the tactical principles enumerated above as well as the potential dangers an out-of-control vehicle whose tires have been disabled poses to the Department member and the general public.

The policy is not to be compared to the use of spike strips, which is a sound tactical principle wherein air pressure is slowly released.

Revised 12/11/14

Revised 10/23/14

Revised 07/12/13

Revised 12/19/12 (Implementation January 1, 2013)

Revised 06/13/05

EXHIBIT C

Los Angeles County Sheriff's Department

NEWSLETTER



Field Operations Support Services, (323) 890-5411

VOLUME 15 NUMBER 25

DATE: August 26, 2015

USING A FIREARM AGAINST A VEHICLE

Shooting at a vehicle is inherently dangerous and almost always ineffective. An assaultive suspect driving a motor vehicle shall not presumptively justify a Department member's use of deadly force. A Department member threatened by an oncoming motor vehicle shall move out of its path instead of discharging a firearm at it or its occupant(s), allow the vehicle to pass, and utilize other tactical or investigative means to apprehend the suspect.

In the extraordinary instance that a Department member feels compelled to fire at a vehicle or its occupant(s), the conduct of the involved personnel shall be evaluated in accordance with sound tactical principles which include:

- Cover and/or tactical relocation;
- Safe distance;
- Incident command and tactical leadership;
- Coordinated personnel placement;
- Tactical approach;
- Regard for viable target acquisition;
- Due regard for background, including the location, other traffic, and innocent persons;
- Due regard for crossfire;
- Controlled fire and management of ammunition.

A Department member shall not discharge a firearm at a motor vehicle, unless the member has an objectively reasonable belief that:

- The vehicle or suspect poses an immediate threat of death or serious physical injury; and
- The member has no reasonable alternative course of action to prevent death or serious physical injury.

Shooting at the tires of a vehicle is inherently dangerous and presents additional risk to Department members and others in the immediate area.

EXHIBIT D

Los Angeles County Sheriff's Department

NEWSLETTER



Field Operations Support Services, (323) 890-5411

VOLUME 15 NUMBER 14

DATE: 04/01/15

SHOOTING AT VEHICLE TIRES

Shooting at a vehicle is inherently dangerous and almost always ineffective. Shooting at the tires of a vehicle is even more hazardous and will more than likely not accomplish the deputy's goal – to stop the vehicle. In addition, shooting at the tires of a vehicle increases the risk of injury to the deputy, public, and occupants of the vehicle.

Tires, while likely to be damaged from gunfire, would not make the vehicle inoperable or immobile. If the tires were damaged and suddenly lost air pressure, it would make the vehicle unstable and far more difficult to control at any speed, making the out-of-control vehicle into a multi-ton projectile dangerous to the deputy, other vehicles, pedestrians, buildings, and occupants within the vehicle.

Manual of Policy and Procedures section 3-10/220.00, Use of Firearms Against Vehicles and/or Occupants of Vehicles, states that a Department member who feels compelled to fire at the tires of a vehicle shall evaluate the potential dangers of the out-of-control vehicle and use sound tactical principles which include:

- Cover and/or tactical relocation;
- Safe distance;
- Incident command and tactical leadership;
- Coordinated personnel placement;
- Tactical approach;
- Regard for viable target acquisition;
- Due regard for background, including the location, other traffic, and innocent persons;
- Due regard for crossfire;
- Controlled fire and management of ammunition.

Deputies should consider the use of spike strips, which is a sound tactical principle, wherein air pressure is slowly released from the tires. This lessens the chance of having an out-of-control vehicle.

Information regarding the content of this newsletter may be directed to Field Operations Support Services.

SEJ:FAA:AFS:SPF:wp